Associated Rubber Company *and* United Steelworkers of America, AFL–CIO–CLC. Case 10–CA–32902

May 8, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Pursuant to a charge and an amended charge filed on February 12 and March 6, 2001, the Acting General Counsel of the National Labor Relations Board issued a complaint on March 8, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 10–RC–15051. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On April 3, 2001, the Acting General Counsel filed a Motion for Summary Judgment. On April 4, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.[1]

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Georgia corporation with an office and place of business in Tallapoosa, Georgia, has been engaged in the manufacture of rubber. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its operations, sold and shipped finished products valued in excess of $50,000 directly to customers located outside the State of Georgia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 23, 1999, the Union was certified on December 29, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees, truckdrivers, and mechanics employed at the Respondent's Plant 1, Plant 2, and Plant 3 locations in Tallapoosa, Georgia, excluding all office clericals, technical employees, lab technicians, chemist, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about January 15 and January 29, 2001, the Union, by letter, requested the Respondent to recognize and bargain, and, since January 15, 2001, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

[1] In its answer, the Respondent admits the allegations set forth in pars. 4 and 5 of the complaint that it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. The Respondent's answer, however, also states that it "is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations" contained in pars. 4 and 5 of the complaint. The "remaining" allegations in those pars. assert that during *all material times*, the Respondent maintained its admitted status as an employer and the Union maintained its labor organization status. In the underlying representation case, however, the Respondent stipulated that it was an employer and the Union was a labor organization under the Act at all material times. Accordingly, we find that the Respondent's answer as to these matters does not raise an issue warranting a hearing. See *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992); *Times-Herald Record*, 328 NLRB No. 53 fn. 2 (1999).

[2] Member Hurtgen dissented in part from the overruling of the Respondent's objections in the underlying representation case, and he remains of that view. However, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 144, 162 (1941). In light of this, and for institutional reasons, he agrees with the decision to grant the Acting General Counsel's Motion for Summary Judgment.

CONCLUSION OF LAW

By refusing on and after January 15, 2001, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Associated Rubber Company, Tallapoosa, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL–CIO–CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production and maintenance employees, truckdrivers, and mechanics employed at the Respondent's Plant 1, Plant 2, and Plant 3 locations in Tallapoosa, Georgia, excluding all office clericals, technical employees, lab technicians, chemist, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Tallapoosa, Georgia, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 10 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 15, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 8, 2001

John C. Truesdale,	Chairman
Wilma B. Liebman,	Member
Peter J. Hurtgen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL–CIO–CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All full-time and regular part-time production and maintenance employees, truckdrivers, and mechanics employed at our Plant 1, Plant 2, and Plant 3 locations in Tallapoosa, Georgia, excluding all office clericals, technical employees, lab technicians, chemist, guards and supervisors as defined in the Act.

ASSOCIATED RUBBER COMPANY